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DEPARTMENT OF ENERGY  
Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM15-5-000]

Revised Exhibit Submission Requirements for Commission Hearings

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend Rule 508 of the Commission's Rules of Practice and Procedure to eliminate the requirement that participants in Commission trial-type evidentiary hearings must provide paper copies of all exhibits introduced as evidence. The Proposed Rule will facilitate a shift toward electronic hearing procedures which should improve the efficiency and administrative convenience of the Commission hearing process, reduce the burden and expense associated with paper exhibits, and facilitate the compilation and transmittal of the hearing record to the Commission in electronic format.

DATES: Comments are due **[INSERT DATE 60 days after publication in the FEDERAL REGISTER]**.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through <http://www.ferc.gov>. Documents created electronically

using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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1. The Commission is proposing to amend Rule 508 of the Commission's Rules of Practice and Procedure<sup>1</sup> to eliminate the requirement that participants in Commission trial-type evidentiary hearings must provide paper copies of all exhibits introduced as evidence. The Commission proposes to amend section 385.508 of the Commission's regulations by removing paragraph (a)(2) and redesignating paragraph (a)(3) as paragraph (a)(2). While still retaining the option to provide exhibits in paper form, the proposed rule will facilitate a shift toward electronic hearing procedures which should improve the efficiency and administrative convenience of the Commission hearing process, reduce the burden and expense associated with paper exhibits, and facilitate the compilation and transmittal of the hearing record to the Commission in electronic format.

#### **I. Background**

2. The Federal government has set a goal to substitute electronic means of communication and information storage for paper. For example, the Government Paperwork Elimination Act directed agencies to provide for the optional use and acceptance of electronic documents and signatures, and electronic record-keeping, where practical.<sup>2</sup> Similarly, the Office of Management and Budget (OMB) Circular A-130 required agencies to use electronic information collection techniques, where such means will reduce the burden on the public, increase efficiency, reduce costs, and help provide better service.

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<sup>1</sup> 18 CFR 385.508.

<sup>2</sup> 44 U.S.C. 3504.

3. On September 21, 2000, the Commission issued Order No. 619, which implemented the use of the Internet for submission of certain documents to the Commission for filing.<sup>3</sup> The eFiling system plays an important role in the Commission's efforts to comply with the Government Paperwork Elimination Act's requirement that agencies provide the option to submit information electronically, when practicable, as a substitute for paper.<sup>4</sup> Filing via the Internet is optional for eligible documents.<sup>5</sup> Since issuing Order No. 619, the Commission has greatly expanded its ability to accept electronically filed material, including interventions, protests, rehearings, complaints, and applications for certificates and licenses.<sup>6</sup> In 2008, the Commission further implemented a system for electronic tariff filing.<sup>7</sup> Consistent with these prior efforts to provide electronic filing options, the Commission is proposing to eliminate the requirement that all exhibits introduced at Commission hearings must be provided in paper form.

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<sup>3</sup> *Electronic Filing of Documents*, Order No. 619, 65 FR 57088 (Sept. 21, 2000), FERC Stats. & Regs. ¶ 31,107 (2000).

<sup>4</sup> 44 U.S.C. 3504.

<sup>5</sup> 18 CFR 385.2001(a).

<sup>6</sup> See *Electronic Registration*, Order No. 891, 67 FR 52,406 (Aug. 12, 2002), FERC Stats. & Regs. ¶ 31,132 (2002); *Electronic Filing of FERC Form 1, and Elimination of Certain Designated Schedules in Form Nos. 1 and 1F*, Order No. 626, 67 FR 36,093 (May 23, 2002), FERC Stats. & Regs. ¶ 31,130 (2002); *Electronic Service of Documents*, 66 FR 50,591 (Oct. 4, 2001), FERC Stats. & Regs. ¶ 35,539 (2001); *Revised Public Utility Filing Requirements*, Order No. 2001, 67 FR 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002); *Filing Via the Internet*, Order No. 703, 72 FR 65,659 (Nov. 23, 2007), FERC Stats. & Regs. ¶ 31,259 (2007).

<sup>7</sup> *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

## II. Discussion

4. Section 385.508 of the Commission's regulations currently requires that "[a]ny participant who seeks to have an exhibit admitted into evidence must provide one copy of the exhibit to the presiding officer and two copies to the reporter, not later than the time that the exhibit is marked for identification."<sup>8</sup> Under current practice, the court reporter assigns Exhibit Numbers to the paper copies and provides the paper copies to the Commission's Docket Branch to be scanned into the Commission's eLibrary system. Copies of all exhibits and motions that are not pre-filed must also be provided to all participants at the hearing.<sup>9</sup>

5. The administrative law judges recently adopted a revised practice for handling exhibits and creating the Exhibit List that removes the need for providing paper copies at the hearing. Under this policy, within seven days of the end of the hearing, participants must file (via eFiling) a "Joint Exhibit List" and each sponsoring party must file (via eFiling) the "Official Copies" of each exhibit that was offered into evidence and admitted or rejected.<sup>10</sup> Thus, it is no longer necessary or efficient to require all participants to

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<sup>8</sup> 18 CFR 385.508(2).

<sup>9</sup> 18 CFR 385.510(d).

<sup>10</sup> See *Notice to the Public, Procedures for Handling Exhibits and Developing the Electronic Hearing Record* (issued December 12, 2014), <http://www.ferc.gov/media/headlines/2014/2014-4/12-12-14-notice.pdf>.

All electronically-filed exhibits must comply with eFiling file format requirements. See *Filing Via the Internet*, Order No. 703, FERC Stats. & Regs. ¶ 31,259 at P 33.

(continued ...)

provide the presiding judge and court reporter with paper copies of each exhibit introduced at the hearing.

6. The Commission therefore proposes to eliminate the requirement that participants provide one paper copy of each exhibit to the presiding officer and two paper copies to the court reporter.<sup>11</sup> The proposed rule represents a continuation of the Commission's efforts to implement the goal of substituting electronic means of communication and information storage for paper means. The proposed rule should save resources because participants will no longer be required to make multiple paper copies of all exhibits that they intend to submit into evidence. The proposed rule also will facilitate the presiding judge's compilation and transmittal of the hearing record to the Commission in electronic format.

### **III. Information Collection Statement**

7. Certain collections of information are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).<sup>12</sup> OMB's regulations require OMB to approve certain information

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For exhibits that have not previously been provided to the participants, such exhibits must still be provided to the participants at the hearing. *See* 18 CFR 385.510(d).

<sup>11</sup> Most participants file pre-filed testimony and exhibits electronically via the eFiling system before the hearing. The presiding judge in each case will continue to determine how participants exchange exhibits brought to the hearing. *See* 18 CFR 385.504(b)(1), (4).

<sup>12</sup> 44 U.S.C. 3507(d).

collection requirements imposed by agency rule.<sup>13</sup> This Proposed Rule does not contain any information collection requirements, as defined under section 3502(3) of the PRA, and compliance with the OMB regulations is thus not required.

#### **IV. Environmental Analysis**

8. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>14</sup> This action has been categorically excluded under section 380.4(a)(2)(ii), addressing procedural rules.<sup>15</sup>

#### **V. Regulatory Flexibility Act**

9. The Regulatory Flexibility Act of 1980 (RFA)<sup>16</sup> generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. This Notice of Proposed Rulemaking (NOPR) concerns procedural matters and, if adopted, is expected to reduce the burden and expense associated with paper exhibits and improve the efficiency and administrative convenience of the Commission hearing process.

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<sup>13</sup> 5 CFR 1320.12.

<sup>14</sup> *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

<sup>15</sup> 18 CFR 380.4(a)(2)(ii).

<sup>16</sup> 5 U.S.C. 601-12.

10. Accordingly, the Commission certifies that this NOPR, if adopted, will not have a significant economic impact on a substantial number of small entities. An analysis under the RFA is not required.

## **VI. Comment Procedures**

11. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due **[INSERT DATE 60 days after publication in the FEDERAL REGISTER]**. Comments must refer to Docket No. RM15-5-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

12. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

13. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

14. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section



below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

## **VII. Document Availability**

15. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

16. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

17. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

By direction of the Commission.

Dated: March 19, 2015.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 385, Chapter I, Title 18, Code of Federal Regulations, as follows.

**PART 385 – RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for Part 385 continues to read as follows:

**Authority:** 5 U.S.C. 551-557; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C. 792-828c, 2601-2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101-7352, 16441, 16451-16463; 49 U.S.C. 60502; 49 App. U.S.C. 1-85 (1988).

2. Section 385.508 is amended by revising paragraph (a) to read as follows:

**§ 385.508 Exhibits (Rule 508).**

(a) *General rules.* (1) Except as provided in paragraphs (b) through (e) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) The presiding officer will cause each exhibit offered by a participant to be marked for identification.

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